

AMENDED IN SENATE AUGUST 23, 2006

AMENDED IN ASSEMBLY MAY 9, 2006

AMENDED IN ASSEMBLY MAY 1, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

AMENDED IN ASSEMBLY APRIL 3, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2951

Introduced by Assembly Member Goldberg

February 24, 2006

An act to amend Section 54999.1 of, to add Section 54999.7 to, and to add and repeal Section 54999.8 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2951, as amended, Goldberg. Capital facilities fees.

Existing

(1) *Existing* law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility, and defines the term “nondiscriminatory” for these purposes.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities

fee” to mean a nondiscriminatory connection fee, as defined, or a nondiscriminatory capacity charge, as defined, or both. The bill would, except with respect to the imposition of a capital facilities fee on a school district, county office of education, community college district, the California State University, the University of California, or state agency, require a public agency that provides public utility service, *other than electricity or gas*, to only charge a public agency rates, charges, surcharges, or fees *whose revenues do not exceed the reasonable cost of providing the public utility service and that are determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, subject to specified criteria*. It would, until January 1, 2010, require any judicial action or proceeding by a public agency that seeks a refund, or challenges the validity, of a fee, rate, charge, or surcharge, or increase, or any action by a public agency to validate an ordinance, resolution, or motion imposing or increasing any of these, to be commenced, as specified.

~~The~~

This bill would require a public agency providing public utility service to complete a cost of service study at least once every 10 years that addresses the cost of providing public utility service to public schools, as defined, to include specified components, thus imposing a state-mandated local program on such an agency.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(3) The bill would make specified declarations with respect to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54999.1 of the Government Code is
2 amended to read:

1 54999.1. For purposes of this chapter:

2 (a) “Actual construction costs” includes the cost of all
3 activities necessary or incidental to the construction of a public
4 utility facility, such as financing, planning, designing, acquisition
5 of property or interests in property, construction, reconstruction,
6 and rehabilitation.

7 (b) “Capacity charge” means a one-time charge to recover the
8 costs of public utility facilities necessary to establish new or
9 expand existing public utility service to a public agency.

10 (c) (1) “Capital facilities fee” means a nondiscriminatory
11 connection fee, a nondiscriminatory capacity charge, or both.
12 “Capital facilities fee” does not include any other rate, charge, or
13 surcharge, or any capital component thereof.

14 (2) For purposes of this subdivision, “nondiscriminatory”
15 means that the fee does not exceed an amount determined on the
16 basis of the same objective criteria and methodology applicable
17 to comparable nonpublic users, and is not in excess of the
18 proportionate share of the cost of the public utility facilities of
19 benefit to the person or property being charged, based upon the
20 proportionate share of use of those facilities.

21 (d) “Connection fee” means a fee to recover the costs of the
22 physical facilities necessary to directly connect a public agency
23 facility to a public utility service provided by a public agency,
24 including, but not limited to, meters, meter boxes, and pipelines
25 to make the connection, and the actual cost of labor and materials
26 for the installation of those facilities.

27 (e) “Public agency” means the United States or any of its
28 agencies, the state or any of its agencies, the California State
29 University, the Regents of the University of California, a county,
30 a county office of education, a city, a school district, community
31 college district, or any other district, a public authority, or any
32 other political subdivision or public corporation of this state.

33 (f) *“Public school” means the California State University, the*
34 *Regents of the University of California, a county office of*
35 *education, a school district, or a community college district.*

36 ~~(g)~~

37 (g) “Public utility facility” means a facility for the provision of
38 water, light, heat, communications, power, or garbage service,
39 for flood control, drainage or sanitary purposes, or sewage
40 collection, treatment, or disposal.

1 ~~(g)~~

2 (h) “Public utility service” means service for water, light, heat,
3 communications, power, or garbage, or for flood control,
4 drainage or sanitary purposes, or sewage collection, treatment, or
5 disposal, provided by a public agency.

6 ~~(h)~~

7 (i) “State agency” or “state” means any state office,
8 department, division, bureau, board, or commission.

9 SEC. 2. Section 54999.7 is added to the Government Code, to
10 read:

11 54999.7. (a) ~~A public agency that provides public utility~~
12 ~~service may only charge a public agency rates, charges,~~
13 ~~surcharges, or fees that are determined on the basis of the same~~
14 ~~objective criteria and methodology applicable to comparable~~
15 ~~nonpublic users. Any public agency providing public utility~~
16 ~~service may impose a fee, including a rate, charge, or surcharge,~~
17 ~~for any product, commodity, or service provided to a public~~
18 ~~agency, and any public agency receiving service from a public~~
19 ~~agency providing public utility service shall pay that fee so~~
20 ~~imposed. Such a fee for public utility service, other than~~
21 ~~electricity or gas, shall not be extended, imposed, or increased by~~
22 ~~any public agency providing public utility service unless it meets~~
23 ~~both of the following requirements:~~

24 (1) *Revenues derived from the fee shall not exceed the*
25 *reasonable cost of providing the public utility service.*

26 (2) *The fee shall be determined on the basis of the same*
27 *objective criteria and methodology applicable to comparable*
28 *nonpublic users, based on customer classes established in*
29 *consideration of service characteristics, demand patterns, and*
30 *other relevant factors.*

31 (b) *A public agency providing public utility service shall*
32 *complete a cost of service study at least once every 10 years that*
33 *addresses the cost of providing public utility service to public*
34 *schools. The study shall describe the methodology for the*
35 *determination of cost responsibility, which may be identified by*
36 *reference to appropriate industry rate making principles,*
37 *including guidance associated with designing and developing*
38 *water rates and charges issued by the American Water Works*
39 *Association or guidance associated with other comparable*

1 *industry principles recognized by public agencies providing*
2 *public utility service.*

3 ~~(b)~~

4 (c) In addition to other notices required pursuant to state law
5 or local ordinance or rule, whenever a public agency that
6 provides public utility service holds a public meeting to establish
7 or increase any rate, charge, surcharge, or fee, that public agency
8 shall provide a written notice of the meeting not less than ~~60~~ 45
9 days prior to the date of the public meeting to any public agency
10 that has filed a written request for such a notice with either the
11 clerk of the governing body or with any other person designated
12 by the governing body to receive these requests.

13 ~~(e)~~

14 (d) Upon request of any affected public agency made not less
15 than 30 days prior to the date of the public meeting to establish or
16 increase any rate, charge, surcharge, or fee, a public agency that
17 provides public utility service shall provide the affected public
18 agency with the data and proposed methodology for establishing
19 or increasing the rate, charge, surcharge, or fee. The data and
20 proposed methodology may be provided during a meeting of staff
21 or other representatives of each agency.

22 ~~(d)~~

23 (e) This section shall not apply to impositions or increases of
24 capital facilities fees subject to Section 54999.3.

25 SEC. 3. Section 54999.8 is added to the Government Code, to
26 read:

27 54999.8. (a) Any judicial action or proceeding by a public
28 agency that seeks a refund of a fee, rate, charge, or surcharge, or
29 increase in any of those costs, or that challenges the validity of a
30 fee, rate, charge, or surcharge, or increase, imposed on or after
31 January 1, 2007, pursuant to this chapter, shall be commenced
32 within 120 days of the effective date of the imposition of the fee,
33 rate, charge, or surcharge, or increase.

34 (b) Any action by a public agency under this chapter to
35 validate an ordinance, resolution, or motion imposing or
36 increasing a fee, rate, charge, or surcharge shall be in accordance
37 with Chapter 9 (commencing with Section 860) of Title 10 of
38 Part 2 of the Code of Civil Procedure. However, no action by a
39 public agency imposing or increasing the fee, rate, charge, or
40 surcharge shall be commenced any earlier than 120 days from the

1 effective date of the imposition of the fee, rate, charge,
2 surcharge, or increase.

3 (c) In any judicial action or proceeding brought pursuant to
4 this section, the public agency imposing or increasing the fee,
5 rate, charge, or surcharge shall have the burden of showing that it
6 was established pursuant to Section 54999.3 or Section 54999.7.

7 (d) This section shall remain in effect only until January 1,
8 2010, and as of that date is repealed, unless a later enacted
9 statute, that is enacted before January 1, 2010, deletes or extends
10 that date.

11 *SEC. 4. If the Commission on State Mandates determines that*
12 *this act contains costs mandated by the state, reimbursement to*
13 *local agencies and school districts for those costs shall be made*
14 *pursuant to Part 7 (commencing with Section 17500) of Division*
15 *4 of Title 2 of the Government Code.*

16 ~~SEC. 4.~~

17 *SEC. 5.* The amendments made to Section 54999.1 of, and the
18 addition of Sections 54999.7 and 54999.8 to, the Government
19 Code by this act are not intended to affect any litigation
20 involving public utility services provided prior to January 1,
21 2007, brought prior to or subsequent to that date. Nothing in the
22 legislative history of the amendments or additions made by this
23 act should be construed as any indication of the meaning of the
24 law as it existed prior to the effective date of the amendments
25 and additions made by this act.